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October 12, 2011

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

re: *Ex Parte* Letter: WC Docket No. 11-59

Dear Secretary Dortch:

The City of Aliso Viejo, California, files this *ex parte* letter to address a claim made by PCIA—The Wireless Infrastructure Association and the DAS Forum (collectively “PCIA”) in the above-referenced proceeding. PCIA claims the City adopted an unreasonable moratorium on siting of wireless facilities and asserts that the Commission should regulate such practices.¹ In fact, the City’s moratorium allowed the City to work with the industry, to research wireless facility siting developments, and to update its standards accordingly. PCIA presents no evidence to justify federal regulation of these or other local practices.²

The City adopted its moratorium after the City received certain ill-conceived, *ad hoc* applications to site facilities in residential neighborhoods. Although the City is a master-planned community with strict architectural guidelines, the applications the City received gave little attention to these considerations. Through the moratorium, the City sought to develop a master plan that would steer applications away from residential neighborhoods while furthering the City’s job-growth goals, which the City agrees is dependent on the placement of wireless service facilities.

CITY OF ALISO VIEJO

INCORPORATED JULY 1, 2001

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¹ Comments of PCIA—The Wireless Infrastructure Association and the DAS Forum (a Membership Section of PCIA), WC Docket No. 11-59, at 33 n.114, Exh. B (July 18, 2011).

² The City supports the comments filed in this proceeding by the National League of Cities *et al.*

The Commission should not regulate in this area. Moratoria are traditional zoning tools, and local governments and industry have long operated under a joint agreement recognizing that:

Moratoria, where necessary, may be utilized when a local government needs time to review and possibly amend its land use regulations to adequately address issues relating to the siting of wireless telecommunications facilities in a manner that addresses local concerns, provides the public with access to wireless services for its safety, convenience and productivity, and complies with the Telecommunications Act of 1996.³

Although courts have properly recognized that such moratoria generally do not run afoul of the Communications Act,⁴ PCIA claims moratoria extending longer than six months should be preempted *in all cases* because they “have the effect of prohibiting” the provision of telecommunications services.⁵ This would be a mistake. Even the joint industry-community agreement, which PCIA cites, recognized certain moratoria would last longer than six months. As it put it: “All parties understand that cases may arise where the length of a moratorium may need to be longer than 180 days.”⁶

In the City’s case, no provider challenged the City’s moratorium, or brought a claim of unreasonable delay under the FCC’s recent wireless facility siting order. California law allows up to two years for cities to study zoning issues like this.⁷ Given the City’s very small staff (the Planning Department has only three full-time planners), the City’s staff gave it the priority they could. No carrier offered to step up and augment that workforce commitment. Staff sought policy direction from the City Council, so Council appointed an *ad hoc* committee. While this took additional time, the City received few or no complaints about the moratorium’s length. Moreover, PCIA presents no evidence to suggest that the City’s moratorium had an adverse effect on any entity’s ability to provide service.

In the end, the City’s moratorium proved to be very useful. It allowed the City to meet with wireless service providers, to research the latest developments in the field, and to develop an ordinance that would facilitate broadband deployment while protecting the community’s interests. In June, with these updated standards in place, the City lifted its moratorium, and is now prepared to process wireless facility applications. The carriers appear to be happy with the outcome. None objected to the new ordinance and 6 have submitted applications to the City for processing in accordance with the new regulations.

³ Guidelines for Facilities Siting Implementation and Informal Dispute Resolution Process, available at: <http://transition.fcc.gov/statelocal/agreement.html>

⁴ *Sprint Spectrum, L.P. v. City of Medina*, 924 F. Supp. 1036, 1039 (W.D. Wash. 1996).

⁵ PCIA Comments at 54.

⁶ See n.3, *supra*.

⁷ Cal. Gov’t Code § 65858.

The City urges the Commission not to attempt to interfere with local practices such as moratoria that are successfully promoting broadband deployment while protecting local communities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Armijo', is written over a horizontal line.

Albert Armijo
City of Aliso Viejo, California
Director of Planning Services